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Dear Phil,

As we discussed, I believe it is important to document The Spangenberg Group's position on a few of the issues surrounding the current case-weighting study. In my opinion, there are three issues of primary importance to be discussed:

1. The different case counting methodologies utilized by TSG and APRI;
2. The validity of TSG's public defender disposition verification methodology; and,
3. The final presentations of data.

Different Case Counting Methodologies

TSG is counting dispositions by incidents and APRI is counting cases by defendant per day. The main problem to resolve is whether or not the different methodologies produce an "advantage" for either group. We believe that it will not.

My understanding is that there is concern on the part of prosecutors that since their disposition counts during the time study will be low in comparison to defenders, that this will, in and of itself, prove detrimental to them. To begin with, I think that it is important to stress that *the premise underlying workload time studies is that numerical case counts oversimplify the actual work put in to some types of cases and fail to accurately reflect the amount of time required to adequately process defendants in different types of cases.* By this, I mean that simple numerical case counts fail to track the time attorneys and judges spend on activities that are unique to their specific roles, such as traveling, waiting in court, or participating in training. Weighted caseload studies provide policy makers with an objective and realistic methodology for determining staffing needs and resource allocation for judges, prosecutors and defense attorneys. Thus, the reports should avoid case count comparisons as a matter of principle.

The second point is that the study methodology precludes comparisons. As we all know,

each of the three components of the judicial system have very different workloads. For example, district attorneys conduct work on numerous cases in which charges are never filed -- these cases are never seen by public defenders. On the other hand, district attorneys have access to police officers to do some of the investigative work on cases, a resource not available to public defenders. Likewise, the work performed by judges is even more dissimilar from that conducted by public defenders or district attorneys.

Because of this, the study aims to provide caseload standards for each of the three court functions independent of the other two. The workload standards for one component should not and cannot be used to assess the performance of either of the other two. For instance, the study may conclude that it takes a district attorney on average 25 hours to complete a Felony B case, a judge on average 15 hours, and a public defender on average 20 hours. This does not mean that the district attorneys are being inefficient. It simply means that, because the work performed by each justice system component is unique, the resulting workload standards must also be distinct and separate standards.

Our third point for saying that neither side will have an advantage involves the case-weighting methodology itself. The case-weighting methodology we have employed in the past is also, to the best of my knowledge, being employed by APRI as well. The unit of measurement used to determine the projected workload and resulting standard for each type of case is “attorney-time-per-disposition.” The attorney-time-per-disposition figure is determined by calculating the total number of hours attributed to a case-type during the study divided by the total number of dispositions for that same case-type during the study period:

$$\frac{\text{Total Attorney Hours}}{\text{Total Dispositions}} = \text{Attorney Hours Per Disposition}$$

Once attorney-hours-per-disposition have been calculated, the equation to determine workload standards is fairly simple. First, determine the available hours the average attorney can work per year. Next, divide the total available attorney hours by the attorney-hours-per-disposition figure:

$$\frac{\text{Total Available Attorney Hours Per Year}}{\text{Attorney Hours Per Dispositions}} = \text{Workload Standard}$$

The final step is to apply the new workload standard against annual caseload statistics. *The key point to remember is that the annual caseload must utilize the same counting method used in the*

case-weighting study. If the study counted cases by defendant per day, then policy-makers must also use annual caseload statistics that count cases by defendant by day or the case-weights will be rendered meaningless.

We can all agree that the total number of hours recorded in the time study is not affected by the manner in which cases are counted. Rather, it is the denominator in the formula to calculate the workload standard that is lessened when one counts by defendant instead of incident. A lower denominator increases the resulting workload standard. The resulting workload standard must be applied to annual caseload figures tallied in the same manner as the dispositions were counted during the time study. Annual caseload data counted by defendant will also be lower compared to annual caseload data counted by incident. Thus, because the increased workload standard is now applied to a decreased annual caseload, the same number of attorneys will be required to perform the same work as if the study counted dispositions by incidents. Perhaps an example will serve to highlight this point:

Example A: If 1,000 hours are recorded in the time study under the “Felony B” case-type and 50 Felony B dispositions are similarly recorded, then the average Felony B case would take an average attorney 20 hours to handle. For this example, assume that the average attorney works 1,800 hours per year. When the 1,800 average annual hours is divided by the 20 hours it takes on average to complete a Felony B case, the resulting workload standard for Felony B cases is 90 cases per year. This means that the average attorney can handle 90 Felony B cases per year if Felony B cases were the only cases he or she worked on. If a district handled 180 Felony B cases per year, and attorneys did not have mixed case-type caseloads, then that district would need two Felony B attorneys.

Example B: Assume in the above example the attorneys were instead asked to count dispositions in such a way that reduced the number of dispositions from 50 to 30 (i.e., the attorneys counted defendants instead of incidents). Following the first step of the methodology, the reduced number of dispositions would result in a conclusion that the average number of hours it takes the average attorney to handle an average Felony B case would be approximately 33 hours (1,000 attorney hours divided by 30 dispositions). The 1,800 average hours per year figure an average attorney can work will not be affected by the disposition count. Thus, following the next step of the methodology, the workload standard for Felony B cases under the new example falls to approximately 55 cases per year (1,800 hours divided by 33). Under the second case count definition (i.e., defendants instead of incidents), the district will have handled fewer total cases than if counted by incidents. For comparison purposes, let’s say that the district handled 110 Felony B cases instead of 180. Thus, when applying the new workload standard (55) to the new annual case count (110), the result is still that the district needs two attorneys to handle the Felony B caseload on an

annual basis if the two attorneys handled only Felony B cases. So long as a district's annual caseload is counted *in the same manner as the time study was conducted*, applying the workload standard will still result in the need for two attorneys.

Felony B Cases		Example A	Example B
1.	Total Attorney Hours Recorded During Time Study	1,000	1,000
2.	Total Dispositions Recorded During Time Study	50	30
3.	Average Attorney Hours Per Disposition: (Row #1 divided by Row #2)	20	33
4.	Average Available Attorney Hours Per Year	1,800	1,800
5.	Workload Standard: (Row #4 divided by Row #3)	90	55
6.	Annual Caseload	180	110
7.	Total Attorney Needed to Handle Caseload: (Row #6 divided by Row #5)	2	2

Public Defender Disposition Verification Methodology

It has also come to my attention that the verification of public defender numbers has been called into question. I feel that I must address why the public defenders must count cases by incident and why we have chosen the verification methodology we are using.

Because the disposition counts recorded in the study, in essence, determine the workload standards, it is very important that the accuracy of the counts be verified. In other studies, we have generally been able to confirm the disposition data against court caseload statistics. Tennessee has no statewide case-tracking system that can serve this purpose. The Administrative Office of Courts does not track Public Defender cases. It is our understanding that no cases are tracked by the A.O.C. for any General Sessions cases, and that only certain Criminal Court cases distinguish whether the case was defended by a public defender, assigned counsel, private attorney or by the defendant pro se. Therefore, the *only* validation method left at our disposal is the Tennessee District Public Defenders Conference's tracking system. *I want to emphasize that we have no other option.*

We have taken several steps to ensure the accuracy of the TDPDC's case counts. As part of any workload study, The Spangenberg Group conducts site visits to familiarize ourselves with the procedures and policies affecting criminal law practice throughout the state and to learn about the variations in practice from judicial district to judicial district. During our site visits to Tennessee, we made it a point to interview support staff and attorneys about case counting practices specifically because we had some reservations about the validity of the disposition counts collected through the time study.

It was our suspicion that some minor variations existed in counting methods in certain districts. We subsequently devised a data audit survey which we asked the Public Defender and Office Manager in each of the survey districts to complete. As we suspected, there were very slight differences in defining a case in a few of the districts. We reported our findings to TDPDC and the conference formally adopted its state-wide uniform definition of a “case.” That definition is: *a single charge, or set of charges, arising out of a single incident and concerning one defendant in one court proceeding*. I should mention that this case count definition is the one promoted by the National Center for State Courts and the Conference of State Court Administrators.¹

Therefore, public defenders participating in the time study must count according to incident or we will have no verification at all. Secondly, all TDPDC annual case-counting statistics have counted cases in this manner. Since TDPDC has the only record of case counts, it would be inconsistent to apply the resulting workload standards to annual caseload counts in any other manner than by incident.

Having said that, we have spent the time since we last spoke trying to see if it is possible to have TDPDC count cases by defendant by day. Kevin Batts of TDPDC has informed us, after much study, that a program can be written to count cases in this manner for the seven week study period. Three of the districts in the study do not use the TDPDC’s CaseMan System (Knoxville, Memphis and Nashville). After several discussions, we have been assured that Memphis will be able to count cases in a like manner. We have not, as yet, resolved whether or not Nashville and Knoxville can do the same. If they can, we are hopeful that we can confirm our time study dispositions against the TDPDC counts by incident and then convert them to defendant if that is the only way to resolve this matter.

It is our understanding that the AOC can count cases for judges and prosecutors either by defendants or incidents. We believe it would be more beneficial to the time study participants to have the AOC convert the disposition data from defendant counts to incident counts. We say this because whatever method is ultimately chosen, that method of counting will be institutionalized from here on out as the way cases must be counted. This will put a substantial burden on the public defenders to change their counting procedures from here on out. It is our understanding that the state is currently in the process of improving the AOC’s case-tracking system. We cannot stress enough how important we think it is that any improvement should aim to unify the case-tracking system for the courts, prosecutors and public defenders.

¹ The Conference of State Court Administrators and the National Center for State Courts’ publication, *State Court Model Statistical Dictionary*, 1989, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case [page 19].”

Final Presentation of Data

There is one other major issue to be addressed: In what format should the final presentation of the data for the three groups be made? It has been suggested that a spreadsheet be included at the end of the reports that lists each of the districts and instructs policy-makers which districts should get more public defenders, prosecutors, and judges and which should have reductions in personnel. TSG believes that there are several issues that should be considered when assessing the benefits of presenting the data in such a manner.

First and foremost, this report is a time study of attorney and judge hours. It does not pre-suppose to take into account support staff hours. Each district is unique and each has differences in practice, work environment, number of investigators, and secretarial support. We have not visited each of the districts in Tennessee and therefore we find it presumptuous to assume that we can tell the people of Tennessee how each new attorney must be allocated throughout the state. We think the report will show how many public defenders are needed overall to handle the caseload throughout the state, but the decision on how to allocate those numbers among the districts is best left to the policy-makers in conjunction with representatives from TDPDC and the steering committee.

Secondly, we have concerns that the districts that operate on both state and county funding will be unfairly portrayed in such a simple graphic. For instance, the report might conclude that a large urban district requires 50 public defenders to handle the caseload. If that organization received funding from the state for 40 defenders and funding from the county for 10 defenders, a simple spreadsheet would show that the district did not need any more public defenders. The funding some districts receive from counties is meant to augment, and should never supplant, the funding the state provides. We are afraid that a simple spreadsheet will not reflect this fact and result in certain districts being penalized for augmenting the state funding of judges, prosecutors and public defenders.

Lastly, there is a qualitative piece of this report that could never accurately be displayed by simple quantitative means. For instance the time study may show that attorneys spend an unusually large portion of their work day doing tasks traditionally handled by support staff or para-professionals. Additionally, some public defenders and prosecutors alike hire attorneys for investigator slots, but use them as attorneys rather than as investigators. This study is not designed to measure the impact of this practice but it is fair to assume that the practice reduces the amount of investigative work that could be done on cases. A straight “plus or minus” spreadsheet would not distinguish between offices with investigators and those offices that have attorneys in investigative slots. Allocation of resources should take this into account. TSG thinks that the issue of final presentation of data is best addressed during a steering committee meeting. We suggest that such a

meeting be convened some time in February.

I want to thank you for giving me the opportunity to document The Spangenberg Group's position in regard to these issues. We are committed to working together with NCSC, APRI and your office to provide the people of Tennessee with a fair and accurate time-study report on prosecutors, judges and public defenders.

Sincerely,

Robert L. Spangenberg,
President

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